

CHAPTER 46:10:07
FAMILY SUPPORT WAIVER SERVICES

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46:10:07:01. Definitions. Terms used in this chapter mean:

- (1) “Certification,” the legal authorization from the division pursuant to chapter 46:11:02;
- (2) “Companion care services,” non-medical services geared toward developing an individual’s independent living skills;
- (3) “Consent,” voluntary approval given in writing, orally, or implied by the action of a person with adequate information and sufficient understanding to comprehend the consequences of the decision;

(4) “Coordinator,” an individual employed by an OHCDs or an independent contractor meeting the requirements of this chapter, to assist participants who receive family support services in gaining access to needed family support and other available services, as well as needed medical, social, educational, and other services, regardless of the funding source for the services to which access is gained;

(5) “Department,” the Department of Human Services;

(6) “Division,” the Division of Developmental Disabilities;

(7) “Employee,” any worker in an agency with choice payment arrangement who is co-employed by the OHCDs or independent contractor and the participant;

(8) “Employer of record,” any OHCDs or independent contractor providing family support services pursuant to this chapter and who is responsible for officially hiring the employee, processing employment forms, providing training to program participants and employees if requested, and managing the payroll function;

(9) “Family,” a person or a group of people who are related to the participant by blood, marriage, or adoption, or define themselves as a family based upon bonds of affection, and who currently share a household with the participant or has, in the past, shared a household with the participant. For the purposes of this subdivision, the phrase, bonds of affection, means enduring ties that do not depend on the existence of an economic relationship and the relationship is expected to endure over time;

(10) “Goals,” outcomes generally expected to be achieved by a participant for each service received, stated in measurable terms so that their attainment can be determined, and should be attained within five years. Goals are developed from an evaluation of the participant's present performance, abilities, and desires;

(11) “Guardian,” with respect to a participant under the age of 18 years, a biological or adoptive parent, or an individual, organization, or agency with court-appointed guardianship; and with respect to a participant 18 years of age and older, an individual, organization, or agency, with court-appointed guardianship;

(12) "Home and community-based services" or "HCBS," the services contained in this chapter that are provided by an OHCDs or an independent contractor meeting the requirements of this chapter, to a participant who, without these services, would require placement in an intermediate care facility for the mentally retarded;

(13) “Independent contractor,” one that enters into an agreement with the division for the provision of services to a participant;

(14) “Individualized service plan” or “ISP,” a single plan for the provision of services and supports to the participant that is directed by the participant, is outcome-oriented, and is intended to specify all needed assessments, supports, and training pursuant to § 46:10:07:17;

(15) “ISP team,” a team composed of the coordinator, the participant, the participant's parent if the participant is under 18 or the participant’s court-appointed guardian, and anyone else the participant desires;

(16) “Managing employer,” any participant receiving services pursuant to this chapter or the participant’s guardian or family who is responsible for recruitment, hiring recommendations, dismissal determinations, training of employees, determining what tasks are to be preformed, and submitting and approving employees’ timecards;

(17) “Minor,” a person under the age of 18;

(18) “Organized Health Care Delivery System” or “OHCDs,” an entity certified by the division under the provisions of chapter 46:11:02 and meeting the requirements of this chapter to provide family support services;

(19) “Participant,” a person receiving services or supports under the provisions of this chapter;

(20) “Participant-directed services,” a service arrangement whereby the participant may choose any individual the participant desires to assist with the design of services, the selection of service providers, and decisions of how the authorized funding is to be spent based on the needs in the participant’s ISP;

(21) “Participant-directed personal care services,” services that enable the individual to accomplish tasks that the individual would normally do if the individual did not have a disability;

(22) “Services,” a system of formalized supports, generic or specialized;

(23) "Service team," the group of people, including the participant, responsible for assisting the participant in identifying personal goals and for designing an ISP to assist the participant to accomplish those goals;

(24) “Sub-contract,” an agreement between an OHCDS and an individual or organization for the provision of services to a participant;

(25) “Sub-contractor,” one that enters into an agreement with an OHCDS and an individual or organization for the provision of services to a participant;

(26) “Supports,” paid or non-paid services that are used to enable an individual to access resources and information available to the individual in the individual’s community.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26.

46:10:07:02. Criteria for designation as an OHCDs. An OHCDs providing services under the provisions of this chapter must meet the following criteria:

- (1) Be certified as an adjustment training center under the provisions of chapter 46:11:02;
- (2) Have a signed provider agreement with the division;
- (3) Have a signed provider agreement with the Department of Social Services; and
- (4) Provide at least one medical service covered under the provisions of article 67:16.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

46:10:07:03. Responsibilities of an OHCDs. An OHCDs has the following responsibilities:

- (1) Have primary responsibility for preparing the participant's annual ISP and modifications as needed;
- (2) Ensure the health and safety of each participant receiving services according to this chapter and demonstrate compliance with a personal outcomes review to assess personal outcomes in the areas of choice, relationships, lifestyle, health and well-being, rights, and satisfaction;
- (3) Ensure that services provided are consistent with the participant's ISP and the provider agreement with the division;
- (4) Serve as an employer of record and a co-employer when the agency with choice model pursuant to § 46:10:07:11 is used;

(5) Monitor and document the effectiveness of the implementation of the ISP on a quarterly basis;

(6) Provide participants and their families with a written list of their rights in an accessible format or language that is easy to understand;

(7) Submit reports and comply with all record keeping required by the division;

(8) Submit claims to the Department of Social Services for reimbursement;

(9) Submit incident reports pursuant to § 46:10:07:09;

(10) Ensure that any employee or subcontractor adhere to the division's qualifications for providing services pursuant to this chapter;

(11) Maintain, transfer, and retain records pursuant to this chapter including all information related to invoicing; and

(12) Have policies approved by the division in the following areas and ensure that any employee or subcontractor is provided adequate training on each policy:

(a) Confidentiality;

(b) Drug-free workplace and drug screening;

(c) Grievance;

(d) Sexual harassment;

(e) Abuse, neglect, or exploitation reporting;

(f) Safety;

(g) Universal precautions;

(h) Proper lifting techniques and body mechanics, back safety, and risk factors for back injury; and

(i) Appeal process.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

46:10:07:04. Subcontracting. An OHCDs may provide family support waiver services directly or subcontract with another provider or another OHCDs. When subcontracting, the OHCDs shall ensure that any provider of services meets all provider criteria set forth in § 46:10:07:02, 46:10:07:05, or 46:10:07:07. Any subcontract shall include:

- (a) The scope, frequency, duration, and cost of the services to be provided;
- (b) The qualifications of the provider;
- (c) The ISP goals that will be addressed by the subcontractor;
- (d) The signature of the participant, or the participant's parent or guardian, the service provider and the OHCDs; and
- (e) The reason for service termination of the sub-contract.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

46:10:07:05. Criteria for designation as an independent contractor. An independent contractor providing participant-directed personal care, respite care, companion care, or supported employment under the provisions of this chapter must meet the following criteria:

- (1) Have a signed provider agreement with the department;
- (2) Have a signed provider agreement with the Department of Social Services;

- (3) Meet the applicable requirements for the service provided;
- (4) Meet the following qualifications:
 - (a) Be at least 18 years of age;
 - (b) Pass a criminal background check;
 - (c) Be able to communicate effectively, verbally and in writing;
 - (d) Be able to follow written or verbal instructions provided by the participant, guardian, advocate, or family member of the participant; and
 - (e) Have the abilities or skills necessary as determined by the participant to meet the participant's needs as outlined in the ISP; and
- (5) Have policies approved by the division in the following areas specific to the services being provided by the independent contractor:
 - (a) Participant-directed personal care;
 - (b) Respite care;
 - (c) Companion care;
 - (d) Supported employment;
 - (e) Confidentiality;
 - (f) Drug-free workplace;
 - (g) Grievance;
 - (h) Emergency procedures and back-up plan;
 - (i) Sexual harassment;
 - (j) Abuse, neglect, exploitation, and incident reporting;
 - (k) Safety;
 - (l) Universal precautions;

(m) Proper lifting techniques and body mechanics, back safety, and risk factors for back injury;

(n) Termination and notice requirements; and

(o) Payment and billing.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

46:10:07:06. Responsibilities of an independent contractor. An independent contractor has the following responsibilities:

- (1) Comply with state and federal worker's compensation requirements;
- (2) Comply with division qualifications set forth in this chapter for providing services;
- (3) Submit reports and comply with all record-keeping required by the division;
- (4) Submit claims to the Department of Social Services for reimbursement;
- (5) Maintain, transfer, and retain records pursuant to this chapter, including all information related to invoicing;
- (6) Ensure the health and safety of each participant receiving services according to this chapter;
- (7) Demonstrate compliance with personal outcome measures to assess personal outcomes in the areas of choice, relationships, lifestyle, health and well-being, rights, and satisfaction;
- (8) Provide a written list of rights to each participant and to the participant's family or guardian in an accessible format or language that is easy to understand;

(9) Serve as an employer of record and co-employer when an agency with choice model is used;

(10) Receive training from the participant or legal guardian, advocate, or family member of the participant in performance of any service outlined in the ISP;

(11) Submit incident reports pursuant to § 46:10:07:09; and

(12) Comply with approved policies pursuant to § 46:10:07:05.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

46:10:07:07. Criteria for designation as an independent contractor providing service coordination. The independent contractor providing service coordination under the provisions of this chapter must meet the following criteria:

(1) Have a signed provider agreement with the division;

(2) Have a signed provider agreement with the Department of Social Services;

(3) Be incorporated as a nonprofit entity incorporated according to SDCL chapters 47-22 to 47-28, inclusive, and meet the definition for tax exemption status according to § 501(c)(3) of Title 26 of the Internal Revenue Code, October 22, 1986, as in effect on December 20, 1995 and file articles of incorporation and nonprofit status with the Secretary of State and have bylaws approved by its board of directors;

(4) Ensure any employee providing service coordination meet the following qualifications;

(a) Be at least 21 years of age;

- (b) Pass a criminal background check;
- (c) Be able to communicate effectively verbally and in writing;
- (d) Be able to follow written or verbal instructions provided by the participant, guardian, advocate, or family member of the participant;
- (e) Have the abilities or skills necessary to meet the participant's needs as outlined in the ISP;
- (f) Have a degree in the field of human services, social work, sociology, psychology, or related field experience or be a parent of a child with a developmental disability;
- (g) Be able to effectively utilize database and word processing computer software and the Internet;
- (h) Successfully complete a minimum of 40 hours of training provided by the division in the following areas:
 - (i) Administration of the HCBS family support waiver;
 - (ii) Individual service plan development;
 - (iii) Available services;
 - (iv) Defining, identifying and reporting abuse, neglect, and exploitation;
 - (v) Individual education program pursuant to chapter 24:05:27;
 - (vi) Developmental disability eligibility criteria; and
 - (vii) Inventory for client and agency planning training provided by the division; and
- (i) Have the ability to work independently after training is completed; and
- (5) Have policies approved by the division in the following areas:
 - (a) Abuse, neglect, exploitation, and incident reporting;

- (b) Termination of services and notice requirements;
- (c) Grievance and appeal process;
- (d) Rights restrictions, restrictive procedures, and due process;
- (e) Drug-free workplace;
- (f) Sexual harassment;
- (g) Safety;
- (h) Emergency procedures and back up plan;
- (i) Universal precautions;
- (j) Proper lifting techniques and body mechanics, back safety, and risk factors for back injury;
- (k) Generally accepted accounting practices (GAAP);
- (l) Insurance;
- (m) Management of the participant's personal finances;
- (n) Administrative office hours and on-call staffing;
- (o) Confidentiality of information, retention, and protection of records;
- (p) Service team assessments;
- (q) Service coordinator responsibilities and training; and
- (r) Individual service plan and back-up plan.

An independent contractor providing service coordination who is a parent of a child with a developmental disability may not provide service coordination to his or her own child.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

46:10:07:08. Responsibilities of an independent contractor providing service

coordination. An independent contractor providing service coordination has the following responsibilities:

- (1) Comply with state and federal worker's compensation requirements;
- (2) Comply with division qualifications set forth in this chapter for providing services;
- (3) Submit reports and comply with all record-keeping required by the division;
- (4) Submit claims to the Department of Social Services for reimbursement;
- (5) Maintain, transfer, and retain records pursuant to this chapter, including all information related to invoicing;
- (6) Ensure the health and safety of each participant receiving services according to this chapter and compliance with a personal outcomes review to assess personal outcomes in the areas of choice, relationships, lifestyle, health and well-being, rights, and satisfaction;
- (7) Provide a written list of rights to each participant and to the participant's family or guardian in an accessible format or language that is easy to understand;
- (8) Submit incident reports pursuant to § 46:10:07:09;
- (9) Prepare the participant's annual ISP and modifications as needed;
- (10) Serve as the employer of record and co-employer when the agency with choice model pursuant to § 46:10:07:11 is used;
- (11) Ensure that services provided are consistent with the participant's ISP and are detailed in the provider agreement with the division;
- (12) Monitor and document the effectiveness of the implementation of the ISP on a quarterly basis; and
- (13) Comply with approved policies pursuant to § 46:10:07:07.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

46:10:07:09. Incident report – Submission to the division. The OHCDS or independent contractor shall give verbal notice or a facsimile of the incident to the division within 48 hours or the next working day, whichever occurs first, once the OHCDS or independent contractor becomes aware of the incident. The OHCDS or independent contractor shall submit a written incident report on a form provided by the division. The report shall be submitted to the division within seven calendar days after the verbal notice. A report shall be submitted in the following instances:

- (1) Death;
- (2) Life-threatening illness or injury, whether hospitalization occurs or not;
- (3) Alleged instances of abuse, neglect, or exploitation against or by any participant;
- (4) Changes in health or behavior that may jeopardize continued services;
- (5) Illness or injury that resulted from unsafe or unsanitary conditions; or
- (6) Any illegal activity that involves a participant.

The report must contain a description of the incident, specifying what happened, when it happened, and where it happened. The report must be dated and signed by the individual making the report.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(4).

46:10:07:10. Participant selection of an OHCDS or independent contractor. The participant may choose either an OHCDS or an independent contractor for delivery of services.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26 (4).

46:10:07:11. Agency with choice model. The agency with choice model is a co-employment arrangement between an OHCDS or independent contractor and a participant in which the OHCDS or independent contractor is the employer of record and the participant is the managing employer. The participant and the participant's family or guardian may participate in the recruitment, interviewing, selection, training, and supervising of employees who will be providing the service. The OHCDS or independent contractor does the actual hiring. The agency with choice model is limited to the following waiver services:

- (1) Participant-directed personal care;
- (2) Companion care;
- (3) Respite care; and
- (4) Supported employment.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

46:10:07:12. Eligibility. To be eligible for services under this chapter an individual must meet the eligibility criteria set forth by the Department of Social Services.

The coordinator shall gather information necessary to determine eligibility.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(3)(9).

46:10:07:13. Notification of eligibility. The Department of Social Services shall send the notice of eligibility pursuant to § 67:46:08:02.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(3)(4)(9).

Cross reference: Adequate notice to applicant, 67:46:08:02.

46:10:07:14. Notification to participant of providers, services, and rights. The participant or the participant's parent or guardian shall be informed by the coordinator that services are available from the HCBS waiver. The participant or the participant's parent or guardian shall be provided with a list of OHCDs providers and independent contractors, informed of the appeal process, and provided with contact information to request a fair hearing.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(3)(4)(9).

46:10:07:15. Waiting list. If a waiting list develops, the division shall assign a level of priority for entrants to the waiver. The first level is priority status, which is reserved for individuals who are at significant risk. An individual at significant risk is one under any of the following circumstances:

- (1) Whose health, welfare, or safety is in jeopardy;
- (2) Who is at imminent risk of being institutionalized; or
- (3) Who is institutionalized.

Any other individual shall be placed in the second level, which is applicant status. An individual in priority status shall be placed at the top of the waiting list and receive services on a first come, first serve basis. An individual in applicant status shall receive services on a first come, first serve basis but after those in priority status.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(3)(4)(9).

46:10:07:16. Description of services. Any family support service shall be participant-directed to the extent the participant and the participant's family or guardian choose and can include budget and employer authority. Budget and employer authority means the participant and the participant's family can control their own budget for services and can recommend for hire individuals or entities to the OHCDs or independent contractor.

Family support services shall be specifically tailored to the competencies, interests, preferences, and needs of the participant and the participant's family or guardian and respectful of the cultural and ethnic beliefs, traditions, personal values, and lifestyle of the family.

The participant must receive at least one of the following waiver services each month:

(1) Family support coordination services to include:

(a) Coordination of services that will assist an individual to gain access to needed medical, social, and other needed services;

(b) On-going monitoring of the services; and

(c) Initiating and overseeing the assessment and reassessment of the individual's level of care;

(2) Participant-directed personal care services to include:

(a) Assistance with basic living skills such as eating, drinking, toileting, dressing, and personal hygiene;

(b) Assistance with the preparation of meals, not to include the cost of the food itself; and

(c) Assistance with housekeeping chores such as making the bed, dusting, and vacuuming;

(3) Respite care services to include short term assistance, in or out of a participant's home for the temporary relief and support of the family;

(4) Supported employment services to include:

(a) Improving or maintaining skills in employment activities;

(b) Enhancing social and personal development or well being within the context of vocational goals; and

(c) Providing consultation services, as needed by each participant;

(5) Companion care services to include:

(a) Assistance with or supervision of laundry, shopping, or meal preparation, not to include the cost of the food;

(b) Assistance or supervision with the acquisition, retention, or improvement in self-help, socialization, and adaptive skills; and

(c) Assistance with participation in community events to develop appropriate socialization skills to become integrated into the community;

(6) Environmental accessibility adaptation services to include adaptations to the home environment that are a direct benefit to the participant to ensure access, health, and safety.

Adaptations that add to the total square footage of the home are excluded from this benefit. For all purchases over \$1000, the participant must intend to reside in the home for more than two years. Adaptations to a property in which the participant will reside for less than two years are subject to a prior authorization process administered by the division;

(7) Nutritional supplements;

(8) Specialized medical adaptive equipment and supplies to include devices, controls, or appliances that enable participants to increase their abilities to perform activities of daily living or perceive, control, or communicate with the environment in which they live; and

(9) Vehicle modification to include adaptations to vehicles to ensure the participant's safety and access to the community.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(3).

46:10:07:17. Individualized service plans. The coordinator shall make initial contact with the participant within 14 calendar days of being selected by the participant. The ISP must be completed within 30 calendar days of initial contact between the participant and the coordinator.

The ISP shall include:

- (1) Measurable goals for the completion of outcomes;
- (2) Any services or supports to be provided to the participant;
- (3) Start dates to address goals;
- (4) Implementation strategies to address goals;
- (5) Individuals responsible for providing the supports, implementation and monitoring of the ISP;
- (6) An emergency back-up plan;
- (7) Documentation indicating that the participant or the participant's parent or guardian has been involved in, informed of, and agrees with the plan; and
- (8) A description of the process for appeal pursuant to § 46:10:07:34.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(3)(4)(9).

46:10:07:18. Budget utilization information to support participant directed services.

A budget update provided by the coordinator shall be included as an attachment to the ISP.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(2)(9).

46:10:07:19. Annual ISP meeting. The coordinator shall convene a meeting of the participant and the participant's service team to review the ISP at least annually or more often as needed and modify the ISP as appropriate.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(3)(4)(9).

46:10:07:20. ISP review and modification. The coordinator shall monitor and discuss the implementation of the ISP quarterly with the participant and the participant's family or guardian. The participant or any member of the ISP team may request a review or modification of the ISP at any time.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(3)(4)(9).

46:10:07:21. Participant records. All entries in participant records shall be dated and signed and shall include information which is accurate, complete, timely, and relevant to the participant's needs for services or supports.

A copy of the participant records shall be in a format accessible to the participant. If abbreviations and symbols or jargon are used, a key shall be provided.

The participant record shall be held in a location accessible to the division and OHCDS staff and shall include:

- (1) The participant's full name;
- (2) The participant's social security number;
- (3) The date of HCBS eligibility;
- (4) The address of the participant at the time of entry into division service system and current address and phone number;
- (5) A summary of health insurance, financial support, and other entitlements;
- (6) Any identification of family, guardian, conservator, and other interested persons, including current addresses and telephone numbers;
- (7) The status of legal capacity;
- (8) All providers of services or supports including independent contractors, OHCDS subcontractors, and employees employed through the agency with choice model, during the past two years;
- (9) Any employment history, including a list of employers, dates of employment, and any position held;
- (10) The current assessment reports;
- (11) Any unusual incident reports;
- (12) The identity of the responsible party for the management of participant funds;
- (13) The quarterly progress notes, which shall include observation of the participant's progress toward each goal, outcome, and objective and observations of any events pertinent to the participant's growth and development, including behavioral incidents and significant activities and events; and
- (14) The participant's current ISP.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(2).

46:10:07:22. Confidentiality of participant records. Each OHCDs or independent contractor shall have a policy regarding the confidentiality of participant information to ensure the records, paper or electronic copy, are protected against loss, tampering, or unauthorized disclosure of information in accordance with 45 C.F.R., Part 160 and 164 (April 17, 2003) and the provisions of this chapter.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(2)(4)(9).

46:10:07:23. Transfer of participant records. If a participant transfers from one OHCDs or independent contractor to another OHCDs or independent contractor, the transferring entity shall deliver a copy of the participant's record to the new entity upon obtaining consent by the participant or the participant's parent or guardian. A copy shall be made available to the participant or if appropriate, the participant's parent or guardian.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(2)(4)(9).

46:10:07:24. Retention of participant records. The OHCDS or independent contractor must maintain or supervise the maintenance of records for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility, if applicable, the provision of services, administrative costs, statistical, fiscal, other records, and information necessary for reporting and accountability as required by the division.

The OHCDS or independent contractor shall retain such records for six years following termination of the agreement. If such records are under pending audit, the OHCDS or independent contractor shall hold such records for a longer period upon notification from the state.

The state, through any authorized representative, shall have access to and may examine and copy all records, books, papers, or documents related to services rendered pursuant to this section.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(2)(4)(9).

46:10:07:25. Review of an OHCDS. The division shall conduct an announced review of an OHCDS at least biennially, including all or part of any services, finances, or operations of the OHCDS, whether operated directly by the OHCDS or through contracts with individuals or organizations. This review shall include:

- (1) A statistically valid sample of ISPs;
- (2) A satisfaction interview with participants; and

(3) A billing review.

The billing review shall be conducted by a department auditor through a random sample of claims to ensure and validate the accuracy of recording-keeping, supporting documentation, and claim submission. The department may conduct a review at any time upon receipt of a complaint.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

46:10:07:26. Review of an independent contractor. The division shall conduct an annual review through a random sample of at least ten percent of independent contractors including all or part of any services, finances, or operations of the independent contractor. The division may also conduct a review upon receipt of any complaint filed with the division regarding the provision of services by an independent contractor.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

46:10:07:27. Statement of deficiencies and plan of correction. If an OHCDS or independent contractor with a family support provider agreement fails to be in compliance, a statement of deficiencies noting areas of noncompliance shall be issued by the division within 30

calendar days following the survey. The OHCDS or independent contractor must submit a plan of correction to the division within 30 calendar days of receipt of the statement of deficiencies.

The plan of correction shall detail the action to be taken to correct the deficiencies and the date by which the corrections will be made. The plan of correction is subject to acceptance or rejection in whole or in part by the division. The division shall notify the OHCDS or independent contractor within 30 calendar days of receipt of the plan of correction of its decision regarding approval of the plan of correction and status of the provider agreement.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

46:10:07:28. Revocation of the provider agreement. The division may revoke a provider agreement if the OHCDS or independent contractor fails to meet the requirements of this chapter.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

46:10:07:29. Rights of participants and parents or guardians. A participant or the participant's parent or guardian has the following rights:

- (1) Be free from aversive procedures, devices, and treatments;
- (2) Have privacy, dignity, confidentiality, and humane care;

- (3) Be able to communicate in private;
- (4) Be able to communicate in the participant's primary language or primary mode of communication;
- (5) Be free from retaliation for making a complaint, voicing a grievance, recommending changes in policies, or exercising a legal right;
- (6) Be able to maintain contact with family and friends, unless contact has been restricted by court order;
- (7) Be able to refuse or terminate services, except if services are required by court order; and
- (8) Have access to, read and challenge any information contained in any records about the participant that are maintained by the division or any agency or program funded by the division and to file a written statement in the record regarding any portion of the record with which the participant disagrees.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(4)(9).

46:10:07:30. Highly restrictive procedures. Each independent contractor providing service coordination must have policies addressing the use of highly restrictive procedures. Such procedures include physical restraint, medications to manage behavior, time-out rooms, aversive conditioning, or other techniques with similar degrees of restriction or intrusion. The independent contractor providing service coordination must have policies that include the following:

(1) The service team process used to determine the most appropriate restrictive procedure to use for the participant's needs and restoration plan;

(2) Documentation of the service team's analysis of positive approaches and the less restrictive procedures that were used before implementation of a highly restrictive procedure;

(3) Procedures for review and approval of the use of highly restrictive procedures by the human rights committee formed pursuant to § 46:10:07:31 prior to implementation and at least every six months thereafter. The review date may not exceed six months from the date of approval;

(4) A behavior intervention plan specifying the circumstances under which time-out may be used, the maximum time it may be used, and the procedures to be followed. Behavior intervention plans must be approved by the human rights committee prior to implementation and reviewed at least every six months;

(5) Procedures for review and approval of the use of highly restrictive procedures by the participant's parent, if the participant is under 18 years of age, or the legal guardian; and

(6) Procedures to document, in the participant's plan, timelines for notifying the participant's parent, if the participant is under 18 years of age, or the legal guardian when highly restrictive procedures are implemented.

Source:

General Authority: SDCL 27B-2-26(3).

Law Implemented: SDCL 27B-2-26.

46:10:07:31. Human rights committee -- Composition. Each independent contractor providing service coordination must have a human rights committee or participate in a multiagency committee that ensures that each participant's rights are supported. The committee's membership is appointed and selected by the board of directors and its composition must meet the following criteria:

- (1) Committee membership must include participants or their representatives;
- (2) At least one-third of the committee's members may not be affiliated with the independent contractor or the board of directors; and
- (3) At least one member of the committee has training or experience with issues and decisions regarding human rights.

Source:

General Authority: SDCL 27B-2-26(3).

Law Implemented: SDCL 27B-2-26.

46:10:07:32. Human rights committee -- Procedures. The human rights committee must use the following procedures:

- (1) Review and approve or disapprove all behavior intervention plans which use any of the highly restrictive procedures listed in § 46:10:07:30. The review must ensure the opportunity for the informed consent of and participation by the participant and the participant's guardian, family member, or advocate in the development of highly restrictive interventions;

(2) If such plans continue to be implemented, review and approve or disapprove them at least every six months;

(3) Review each participant's restrictions of rights and restoration plan;

(4) Review and approve the independent contractor's policies, procedures, and practices in limiting rights of participants; and

(5) Be provided with training in individual rights, disability awareness, and the independent contractor's philosophy and mission.

Source:

General Authority: SDCL 27B-2-26(3).

Law Implemented: SDCL 27B-2-26.

46:10:07:33. Rights restriction – Due process. The rights of the participant may only be restricted to protect the participant from endangering self or others or to provide specific services or supports as provided in SDCL 27B-8-52. The rights restrictions shall promote the least restrictive alternative appropriate to meet the needs of the participant. Prior to restricting a participant's rights, the OHCDs or independent contractor shall require the participant, or the participant's parent or guardian, and the participant's ISP team to review and approve each restriction at least annually.

Restoration plans shall be developed and implemented when the need for restricting a person's right is identified. The participant and his or her team shall develop a plan which includes how the right will be restored in part or in whole. The plan shall be reviewed at least annually by the participant or the participant's parent or guardian and by the human rights

committee. A restoration plan shall describe the right that will be restored and shall be outcome-based, attainable, measurable, and time-limited.

If the participant displays behavior that endangers self or others and requires an emergency rights restriction, the OHCDs or independent contractor shall notify the parent if the participant is a minor or the legal guardian within 24 hours of implementation of the restriction.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(4)(9), 27B-8-52.

46:10:07:34. Right of appeal. A participant or a participant's parent or guardian may appeal the following:

- (1) The participant's eligibility for supports and services; or
- (2) Termination or reduction of services.

A participant or a participant's parent or guardian dissatisfied with any of the areas listed in this rule may request a fair hearing pursuant to SDCL chapter 1-26 by notifying the department in writing within 30 calendar days of receipt of the division's decision.

Nothing in this section may be construed as indicating that the department will pay for legal fees for representing the parent, legal guardian, provider, or participant at a fair hearing pursuant to this section.

Source:

General Authority: SDCL 27B-2-25, 27B-2-26.

Law Implemented: SDCL 27B-2-25, 27B-2-26(4)(9).

46:10:07:35. Time and place of hearing -- Time extension. A fair hearing, pursuant to SDCL chapter 1-26, by an impartial hearing officer shall be held within 90 calendar days after receipt for a request by the participant, parent if the participant is under the age of 18, or the participant's guardian. The impartial hearing officer shall set a time and place for the hearing to be held at the earliest reasonable time. The hearing examiner may continue the hearing at the request of any of the parties involved. A request for a continuance must be made at least 10 calendar days prior to the date of hearing.

Source:

General Authority: SDCL 27B-2-25, 27B-2-26.

Law Implemented: SDCL 27B-2-25, 27B-2-26(4)(9).